IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1678 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHOGILAL SOMNATH PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MD AD OZA PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/04/2001

ORAL JUDGEMENT

Heard Mr.A.D.Shah, learned advocate for the petitioner and Mr.A.D.Oza, learned Public Prosecutor on behalf of the respondent - State.

Rule. Mr.A.D.Oza, learned Public Prosecutor waives service of Rule on behalf of the respondent State.

#. The brief facts of the present petition are as under :-

The Senior PSI Mr.K. S. Patel of Billimora Police Station filed complaint against the petitioner accused and one Bhaumik Anilbhai Shah. According to the prosecution case, the petitioner No.1 is the builder and the accused No.2 is Architect. It is also the case of prosecution that these accused had undertaken the construction of Jalaram Complex consisting of four buildings. It is the case of the prosecution that Jalarm Complex B-1 was completed and occupied by members, whereas Jalarm Complex B-2 was under construction. According to prosecution case, one person had come with Camel Cart to unload `Kota' stones at Jalaram Complex B-2 unit. According to further case of prosecution the accused No.2 had prepared the plans and maps of the construction of the said premises and accused No.3 is the Structural Engineer. It is also prosecution case that the accused carried out the construction in violation of rules and regulations and had also not undertaken the required test before commencing construction. According to the further case of prosecution that on 26th January, 2001 witnessed the unprecedented earthquake and resultantly, the Unit No.2 had collapsed and damaged Unit No.1 building which resulted into death of six persons. According to the learned Advocate Mr.A.D.Shah, the building Unit No.1 was existing building and the same was occupied by 17 [seventeen] members. However, it is submitted that out of these seventeen members, 11 members have made full payments towards the cost of respective flat / residential unit to the petitioner. According to Learned Advocate Mr.Shah, out of these 17 members, 5 members have been given alternative accommodation by the petitioner and one is already got his own accommodation and rest of 11 members are without accommodation. Learned advocate Mr.Shah has also submitted that for the building - Unit No.2 which was in fact under construction, for which the petitioner has received part payments from three members namely (i) Ramilaben, (ii) Bharatbhai and (iii) Thakorbhai and such total part payments comes to Rs.5,62,000/- against booking of three flats by the respective members with the building scheme of the petitioner. Mr.A.D.Shah, learned advocate has submitted that this of Rs.5.62 lacs which has been received by the petitioner is the part payment received from three members, however, the petitioner is prepared to deposit this amount before this Court within period of

10 days from today and it is further submitted that necessary undertaking to that effect will be filed before this Court. Mr.A.D.Shah, learned advocate has also submitted that in respect of the members for Building No.1, wherein, in all 17 members were residing and out of these 17 members, 11 members have made full payment against the respective flat / residential unit and the remaining 6 members have paid part payment to the petitioner and remaining payment was to be made, for that the petitioner will reconstruct the entire building. It is also submitted that necessary undertaking on behalf of all organisers / partners to that effect will be filed before this Court within 10 days from today, giving undertaking in a manner that the petitioner will provide flat to all 17 respective members of the Building Unit No.1 and Unit No.2 as per the plan without charging any extra amount than the amount agreed amount of the price of the flat, however, if the member does not want to continue as the member in the scheme then the amount paid by such member will be refunded and there will not be any responsibility to allot such flat to that member. Learned advocate Mr.Shah has also submitted that in respect of six persons who have died in the incident while the building Unit No.2 collapased on Building No.I, for them, the petitioner will deposit amount of Rs.70,000/- for each victim and in all undertakes to deposit Rs.4.20 lacs before this Court within 10 days from today.

#. I have considered the averments made in the present application and averments made in the reply filed by the respondent dated 30th March, 2001 as well as rejoinder filed by the petitioner and also considering the submission made by both the learned advocates, without deciding the merits of the matter and considering the request of both the learned advocates for the parties who requested not to pass reasoned order and therefore considering the matter and before passing the final order, according to my opinion, some observations made by the Apex Court as well as Division Bench of this Court while dealing with said application which are pertinent to quote in relevance of the facts and circumstances of this case which are reproduced as under :-

Recently, the Apex Court in case of GAYA PRASAD V. PRADEEP SRIVASTAVA reported in (2001) 2 SCC page 604, para-19 observed as under :-

"The time is running out for doing something to solve the problem which has already grown into monstrous form. If a citizen is told that once

you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra-legal measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra-legal means which are very often contra-legal means with counterproductive results on the maintenance of law and order in the Country."

There is recent observation of the Apex Court in case of MAKAHN LAL BANGAL V. MANAS BHUNIA, reported in (2001) 2, SCC 652, para-26,

"An alert Judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of a just decision. The interest of the counsel for the parties in conducting the trial in such a way so as to gain success for their respective clients is understandable but the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective search for truth and delivering justice expeditiously - cannot be subdued. However, sensitive the subject matter of trial may be; the courtroom is no place of play for passions, emotions and surcharged enthusiasm."

Recent observation of the Apex Court in case of GOVERNMENT OF A.P. V. A.P. JAISWAL reported in (2001), 1 SCC 748, para-24 which runs as under :

"Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect for the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice."

There is recent observation of the Division Bench of this Court in case of PEOPLES UNION FOR C.L. VS.

STATE [Coram : D.M.Dharmadhikari, C.J.] reported in 2001 (1) G.L.R., page 547 observed that;

"A Judge on assuming office during his tenure sits cut-off from the society as he cannot continue to be in public life, but as he also comes from the society with his own experience of it, he is better stationed at a distance from the problems of the society to view them in a more objective, detached and dispassionate manner, than those involved in it, and for that reason, he is more suited to resolve conflicts and competing claims of the individual and the society. [para 22]".

The Apex Court in a decision rendered in case of JOGINDAR KUMAR VS. STATE OF UP reported in AIR 1994 S.C. page 1349, certain observations are quoted as under :-

`No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Office in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to

person to attend the Station House and not to leave station without permission would do. The, there is the right to have some one informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984, in England. These rights are inherent in Arts. 21 and 22 (1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the Supreme Court issued the following requirements :

(1) An arrested person being held in custody is entitled, if he so request to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

(2) The police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Arts. 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals."

23. In India, Third Report of the National Police Commission at Pg-32 also suggested :

"... An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances :-

(i) The case involves a grave offence like murder, dacoity, robbery , rape etc. , and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence

among the terror stricken victims.

(ii) The accused is likely to abscond and evade the process of law.

(iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines ... "

#. After considering the above observations as well as the averments made in the application as well as reply and rejoinder, in such type of cases it is the duty of the court to see and protect the interest of the persons who become victim in such incident, and simultaneously also to consider the fate of the persons who are behind the bar because of this incident.

#. Learned advocate Mr.A.D.Shah appearing on behalf of the petitioners has submitted that they are prepared to deposit the amount of Rs.5.62 lacs received from three members of Unit No.2 as well as the amount in respect of six persons who have died in the incident while the building Unit No.2 collapased on Building No.I, for them, the petitioner will deposit amount of Rs.70,000/- for each victim and, in all, undertakes to deposit Rs.4.20 lacs for said six victims, before this Court within 10 days from today. Mr.A.D.Shah, learned advocate has also made a statement at Bar that members for Building No.1, wherein, in all 17 members were residing and out of these 17 members, 11 members have made full payment against the respective flat / residential unit and the remaining 6 members have paid part payment to the petitioner and remaining payment was to be made, for that the petitioner will reconstruct the entire building within period of 24 months from today. This Court has also considered the fact that petitioner is ready to file necessary undertaking to that effect, will be filed before this Court within 10 days from today, undertaking that the petitioner will provide flat to all 17 respective members of the Building Unit No.1 and Unit No.2 as per the plan

without charging any extra amount than the amount agreed amount of the price of the flat, however, if the member does not want to continue as the member in the scheme then the amount paid by such member will be refunded and there will not be any responsibility to allot such flat to that member. The petitioner shall have to make it clear in the undertaking that the petitioner will reconstruct the Unit No.1 and Unit No.2 within 24 months from today. Learned Advocate has also submitted that the petitioners will deposit the amount in respect of the persons who died in the said incident and according to submissions, six persons have died so also one camel and the petitioner will deposit Rs.4.20 lacs [Rs.70,000/for each deceased] for six deceased persons of the said incident before this Court within 10 days from today. Mr.Shah has also submitted that so far these two aspects inasmuch as (1) filing of undertaking by the petitioner for reconstructing the entire building for all respective members and (2) deposit of amount in respect of the victims of the incident so also the amount of part payment made by three members as referred above, necessary formalities will be undertaken by the present petitioner Shri Bhogilal Somnath Patel before this Court within 10 days from today.

#. After considering the aforesaid submissions of the learned Advocate Mr.Shah so also considering the fact that as per the statement made at the bar, necessary undertakings will be filed by the present petitioner before this Court within 10 days from today and will accordingly deposit Rs.4.20 lacs before this Court in respect of six victims of the incident so also the amount of Rs.5.62 lacs as part payment made by three members, will be deposited by the petitioner before this Court within 10 days from today and considering the facts of the present case and in view of the observations made by the Apex Court including the observations of the Division Bench of this Court, following order is passed.

The parties do not press for reasoned order. Considering the submissions made on behalf of the parties, and having regard to the circumstances and facts of the case, the application is allowed and the petitioner is ordered to be released on bail in connection with Crime Register No. I- 20 / 2001 registered at Billimora Police Station for the offence charged against them in this application on executing bond of Rs.25,000/- each (Rupees Twenty Five Thousand only) with one surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall,

a) not take undue advantage of his liberty or abuse his liberty;

b) not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) mark his presence before Billimora Police Station on every Sunday between 9.00 a.m. to 2.00 p.m. till filing of the chargesheet and after filing of the chargesheet against the present petitioners, shall mark their presence before the aforesaid police station once in a month preferably on 1st Sunday of each month till the trial is over.

f) furnish the address of his residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

g) surrender his Passport, if any, to the lower court within a week;

3. If breach of any of the above conditions is committed, the Sessions Judge, Valsad at Navsari will be free to issue warrant or take appropriate action in the matter.

4. Bail before the lower Court having jurisdiction to try the case. It would be opened to the trial court concerned to give time to furnish the solvency certificate if prayed for.

#. In view of statement made by the learned Advocate Mr.A.D.Shah on behalf of the petitioner to the effect that the amount so directed to be deposited as aforesaid against six deceased persons of the incident which comes to Rs.4,20,000/-, which will be deposited before this Court in the name of Registrar of this Court, therefore, the Registry of this Court is directed to accept the aforesaid amount from the petitioner by way of demand draft in the name of the Registrar of this Court and upon realisation of the said amount, the Registrar of this

Court will deposit the said amount before the State Bank of India, High Court Branch, Sola, Ahmedabad for a period of one year in the name of the Registrar of this Court. However, it is open for the parties including legal heirs of six victims who died, in case of any difficulty in respect of the amount which may be deposited before this Court, the respective party including legal heirs of six victims who died in incident, are at liberty to apply before this Court by way of necessary application. In view of statements made by Mr.A.D.Shah, learned Advocate, necessary undetaking is directed to be filed before this Court by the present petitioner and the petitioner is also directed to deposit amount of Rs.5.62 lacs and Rs.4.20 lacs by way of demand draft in the name of Registrar of this Court within period of 10 days from today. It is further directed to the Registrar of this Court that upon realisation of the said amount, total amount as directed above, shall be deposited before the State Bank of India, High Court Branch, Sola, Ahmedabad for a period of one year from the date of deposit in the name of the Registrar of this Court.

#. It is further directed to the petitioner to supply xerox copy of the affirmed undertaking to the office of the Public Prosecutor, concerned trial court and to the concerned investigating officer.

#. It is also made it clear that the amount of Rs.70,000/- in respect of each victim who died in the incident, such deposit of Rs.70,000/- for each victim shall not come in their way for claiming compensation under the Workmen's Compensation Act.

#. It is further directed to the petitioner that in pursuance of the statement made before this court, necessary undertakings as referred to in this order are required to be filed before this Court by the petitioner within 10 days from today and the such undertakings are required to be strictly complied with by the petitioners without fail, otherwise in the event of non compliance of any such term of the said undertakings, the respondent State as well as the concerned members of Unit No.B-1 and Unit No.B-2 are entitled to file necessary application before this Court for cancellation of order granting bail in favour of the petitioners.

##. This order is passed by this Court considering the peculiar facts and circumstances of the case as well as considering the undertaking of the petitioner and depositing the amount for the victim as well as members,

therefore this order may not be treated as precedent for other similar cases.

Rule is made absolute accordingly. Direct service is permitted today.

Date : 18-4-2001   [H.K.Rathod, J.]

#kailash#